

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90097

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

MEMORANDUM OPINION

(Filed: June 22, 2018)

PRESENT: SMITH, *Chief Judge*.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (the “Subject Judge”). For the reasons discussed below, the complaint will be dismissed.

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, after review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is frivolous or lacks sufficient evidence to raise an inference of misconduct. 28 U.S.C. §§ 352(b)(1)(A)(i)-(iii).

Complainant was a defendant in a criminal proceeding before a District Judge who is not named as a Subject Judge of this complaint. After a trial, a jury convicted Complainant of being a felon in possession of a firearm and the presiding District Judge

sentenced Complainant to a lengthy term of imprisonment. When Complainant appealed, the government voluntarily moved to vacate the sentence and remand for resentencing; the Court of Appeals granted the motion. Upon remand, the matter was reassigned to the Subject Judge.¹

Upon remand, the Subject Judge appointed counsel to represent Complainant. When counsel moved to withdraw on grounds of a conflict of interest, the Subject Judge granted the motion and appointed substitute counsel. Complainant moved several times for replacement counsel, but the Subject Judge denied the motions. The matter proceeded to a five-day jury trial at which Complainant was represented by substitute counsel. Complainant was again convicted of being a felon in possession of a firearm. After the verdict, the Subject Judge granted Complainant's motion to proceed pro se at sentencing. Sentencing has not yet taken place.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts "by intentionally depriving [Complainant] his Due Process rights afforded by the U.S. Constitution." Complainant further alleges that the Subject Judge "is unable to discharge all duties of office by reason of mental or physical[]

¹ To the extent any of Complainant's allegations concern the first presiding District Judge, such allegations do not provide "reasonable grounds for inquiry" into the existence of judicial misconduct. Accordingly, no complaints will be identified. *See* Rule 5, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

disability, which impairs the ability to up-hold the U.S. Constitution, as well as the dictates of the U.S. Supreme Court [precedent].”

Specifically, Complainant alleges that the Subject Judge appointed the first attorney and, despite being made aware of that attorney’s conflict of interest, permitted him to represent Complainant for some time, which allowed that attorney to delay Complainant’s trial. In addition, although the Subject Judge later appointed substitute counsel, Complainant alleges that substitute counsel also had a conflict of interest because he would not agree to file certain briefs and motions as Complainant requested. Complainant alleges that, over his objection, the Subject Judge “forced [him] to proceed to trial with ineffective [substitute counsel]” and improperly declined to grant Complainant’s pro se motions for replacement counsel and for substantive relief. Complainant contends that the Subject Judge’s decisions and rulings, which caused him to suffer ineffective representation by initial counsel and substitute counsel, violated his constitutional rights, including the right to a speedy trial, the right to an impartial jury, the right to due process, and the right to confront his accusers.²

The majority of Complainant’s allegations reflect his disagreement with decisions and rulings by the Subject Judge, including the appointment of initial and substitute counsel and the denial of his motions to replace substitute counsel. Such allegations are

² To the extent Complainant alleges misconduct by private attorneys, such individuals are not federal judges and are therefore not subject to the Judicial Conduct and Disability Act. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Allegations against non-covered individuals are beyond the scope of this proceeding and will not be addressed in this opinion.

merits-related. Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“An allegation that calls into question the correctness of a judge’s ruling, . . . without more, is merits-related.”). Complainant will be able to file an appeal to seek review of decisions and rulings in his criminal proceeding after judgment has been entered. This administrative proceeding does not serve as a substitute for filing an appeal. *See In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008) (The “misconduct procedure [under the Act] is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges’ rulings.”). Because merits-related allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act, *see* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, these allegations are subject to dismissal.

When Complainant’s remaining claims are considered apart from his merits-related allegations, it is apparent that there is no support for a conclusion that the Subject Judge suffers from a disability or has engaged in any form of judicial misconduct. All remaining allegations are therefore subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: June 22, 2018)

PRESENT: SMITH, *Chief Judge*.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaint brought pursuant to 28 U.S.C. § 351 is hereby dismissed under 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

This order constitutes a final order under 28 U.S.C. § 352(c). Complainant is notified in accordance with Rules 11(g)(3) and 18, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, of the right to appeal this decision by the following procedure:

Rule 18(a) Petition. A complainant or subject judge may petition the Judicial Council of the Third Circuit for review.

Rule 18(b) Time. A petition for review must be filed in the Office of the Circuit Executive within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, and in an envelope marked "Misconduct Petition" or "Disability

Petition.” The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with “I hereby petition the judicial council for review of . . .” and state the reasons why the petition should be granted. It must be signed. There is no need to enclose a copy of the original complaint.

The full text of the *Rules for Judicial-Conduct and Judicial-Disability*

Proceedings is available from the Office of the Circuit Executive and on the Court of

Appeals’ internet site, www.ca3.uscourts.gov.

s/ D. Brooks Smith

Chief Judge

Dated: June 22, 2018